

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR 01-35 MV

WILLIAM LAWRENCE ANTOINE,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant's Appeal of Detention Order filed January 22, 2001, [**Doc. No. 9**]. The Court, having reviewed the record in this case, the relevant law and being otherwise fully informed, finds that the appeal is not well-taken and will be denied.

Defendant is charged by indictment with possession of a firearm by a person previously convicted of a felony 18 U.S.C. §§ 922(g)(1) and 922(a)(2), and one count of possession of a firearm which is not registered in the National Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d). On January 18, 2001, United States Magistrate Don J. Svet found that Defendant was a danger to the community and a flight risk and remanded Defendant to the marshal's custody pending trial. Defendant now seeks review of the magistrate's detention order before this Court.

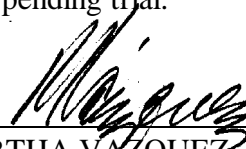
A defendant detained by a magistrate judge may seek review before the district court. 18 U.S.C. § 3145(b). The district court conducts a *de novo* review of the facts with no deference to the magistrate judge's findings. See *United States v. Koenig*, 912 F.2d 1190, 1192 (9th Cir. 1990). In performing this review, the court may, in its discretion, rely upon the record developed before the magistrate or conduct additional evidentiary hearings. See *Koenig*, 912 F.2d at 1193

(holding that district court may hold evidentiary hearings if “necessary or desirable.”); *United States v. Alonso*, 832 F. Supp. 503, 504 (D. Puerto Rico 1993) (stating that *de novo* review does not require a *de novo* evidentiary hearing); *United States v. Chagra*, 850 F. Supp. 354, 357 (W.D. Pa. 1994) (holding that the district court may incorporate the record of the proceedings conducted by the magistrate judge including admitted exhibits). The Court has reviewed the pleadings and transcript of the proceedings before the magistrate and finds that further evidentiary hearings are unnecessary.

The factors to be considered by the court in determining whether there are conditions of release that will reasonably assure the appearance of the defendant as well as the safety of any other persons in the community include: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person’s release. 18 U.S.C. § 1342(g).

The Court held a hearing on February 9, 2001 and requested that counsel for defendant seek a secured treatment facility in which defendant could be placed. As of March 12, 2001, counsel was unable to locate such a facility that meets the court’s requirement.

IT IS THEREFORE ORDERED that Defendant’s Appeal from Detention Order [Doc. No. 9] is hereby **DENIED**. Defendant will remain in custody pending trial.



MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE